

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

OFFICE OF COMPLIANCE & INSPECTION

IN RE: ELECTROLIZING, INC.

FILE NO.: OCI-HW-16-2

NOTICE OF VIOLATION

A. Introduction

Pursuant to Sections 42-17.1-2(21) and 42-17.6-3 of the Rhode Island General Laws, as amended, (“R.I. Gen. Laws”) you are hereby notified that the Director of the Department of Environmental Management (the “Director” of “DEM”) has reasonable grounds to believe that the above-named party (“Respondent”) has violated certain statutes and/or administrative regulations under the DEM's jurisdiction.

B. Facts

- (1) The property is located at 10-20 Houghton Street in the city of Providence, Rhode Island (the “Property”). The Property includes a facility used for the application of high performance chrome coatings on a variety of substrates and products (the “Facility”).
- (2) Respondent operates the Facility.
- (3) Respondent is registered with the DEM as a large quantity hazardous waste generator at the Facility pursuant to the DEM's *Rules and Regulations for Hazardous Waste Management* (the “Hazardous Waste Regulations”) and pursuant to Title 40 of the Code of Federal Regulations (“40 CFR”) under the name “Electrolizing, Inc.” with the U.S. Environmental Protection Agency (“EPA”) identification number (“ID”) RID981062805.
- (4) On 4 January 2016, the DEM inspected the Facility. The inspection revealed the following:
 - (a) Failure to store the following containers that held hazardous waste for less than 90 days:
 - (i) Two 25-gallon containers located in the Plating Room (one labeled chromic acid with an accumulation start date of 28 August 2015 and one labeled nitric acid with an accumulation start date of 3 August 2015) (the “25 Gallon Containers”); and

- (ii) Three 50-gallon containers located in the Plating Room (one labeled zinconal alkaline solution with an accumulation start date of 3 August 2015, a second labeled chrome solids sludge with an accumulation start date of 2 February 2015, and the third holding lead tape with chromic acid with an accumulation start date of 23 September 2015 (the “Lead/Chrome Waste Container”) and one 50-gallon container located in the Wastewater Treatment Room that held methyl ethyl ketone solution with an accumulation start date of 2 March 2015) (collectively, the “50 Gallon Containers”);
- (b) Failure to label the following containers with a name, address and EPA ID:
 - (i) The 25 Gallon Containers;
 - (ii) The 50 Gallon Containers;
 - (iii) One 40-gallon container located in the Plating Room that held hazardous waste in the form of chromic acid; and
 - (iv) One 50-gallon container located in the Plating Room that held hazardous waste in the form of chromic acid; and
- (c) Failure to store the following containers located in the Plating Room that held incompatible hazardous wastes in close proximity without a physical barrier:
 - (i) Three 250-gallon totes holding sodium hydroxide; and
 - (ii) The containers described in Section B(4)(b) above, with the exception of the one 50-gallon container located in the Wastewater Treatment Room.
- (5) As of the date of this Notice of Violation (“NOV”), Respondent has failed to demonstrate that it has corrected the noncompliance described in Section B(4) above.

C. Violation

Based on the foregoing facts, the Director has reasonable grounds to believe that you have violated the following statutes and/or regulations:

- (1) **DEM’s Hazardous Waste Regulation 5.13A** – requiring that a large quantity generator of hazardous waste store hazardous waste onsite for a period of time that does not exceed 90 days.
- (2) **DEM’s Hazardous Waste Regulation 5.13F.1** – requiring that a large quantity generator of hazardous waste label each container, excluding satellite accumulation containers, holding hazardous waste with the words “Hazardous Waste”, the chemical or common name of the waste and the name, address and EPA ID of the generating facility.

- (3) **DEM's Hazardous Waste Regulation 5.13B.9** – requiring that a large quantity generator of hazardous waste store hazardous waste that is incompatible with other waste or products in a separate area or use a physical barrier to separate the incompatible materials.

D. Order

Based upon the violations alleged above and pursuant to R.I. Gen. Laws Section 42-17.1-2(21), you are hereby ORDERED to **within 30 days of receipt of the NOV**:

- (1) Remove all hazardous waste from the Property that has been stored for greater than 90 days using a permitted hazardous waste transporter and ship the hazardous waste to a licensed Treatment, Storage and Disposal Facility (the “Designated Facility”) and submit a copy of the uniform hazardous waste manifest signed by the Designated Facility to the DEM's Office of Compliance & Inspection;
- (2) Label all containers holding hazardous waste, excluding satellite containers, with the words “Hazardous Waste”, the chemical or common name of the waste and the Generator’s name, address, and EPA ID; and
- (3) Relocate all containers holding hazardous waste that are incompatible with other wastes or products to a separate area of the Facility **OR** provide a physical barrier between the hazardous waste and the incompatible materials.

E. Penalty

- (1) Pursuant to R.I. Gen. Laws Section 42-17.6-2, the following administrative penalty, as more specifically described in the attached penalty summary and worksheets, is hereby ASSESSED, jointly and severally, against each named respondent:

\$ 15,000

- (2) The proposed administrative penalty is calculated pursuant to the DEM's *Rules and Regulations for Assessment of Administrative Penalties*, as amended, and must be paid to the DEM within 30 days of your receipt of the NOV. Payment shall be in the form of a certified check, cashiers check or money order made payable to the “General Treasury - Environmental Response Fund,” and shall be forwarded to the DEM Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, Rhode Island 02908-5767.
- (3) Penalties assessed against Respondent in the NOV are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.

- (4) If any violation alleged herein shall continue, then each day during which the violation occurs or continues shall constitute a separate offense and the penalties and/or costs for that violation shall continue to accrue in the manner set forth in the attached penalty summary and worksheets. The accrual of additional penalties and costs shall be suspended if the Director determines that reasonable efforts have been made to comply promptly with the NOV.

F. Right to Administrative Hearing

- (1) Pursuant to R.I. Gen. Laws Chapters 42-17.1, 42-17.6, 42-17.7 and 42-35, each named respondent is entitled to request a hearing before the DEM's Administrative Adjudication Division regarding the allegations, orders and/or penalties set forth in Paragraphs B through E above. All requests for hearing MUST:

- (a) Be in writing. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.6-4(b);
- (b) Be **RECEIVED** by the DEM's Administrative Adjudication Division, at the following address, within 20 days of your receipt of the NOV. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.7-9:

Administrative Clerk
DEM - Administrative Adjudication Division
One Capitol Hill, 4TH Floor
Providence, RI 02903

- (c) Indicate whether you deny the alleged violations and/or whether you believe that the administrative penalty is excessive. See R.I. Gen. Laws Section 42-17.6-4(b); **AND**
- (d) State clearly and concisely the specific issues which are in dispute, the facts in support thereof and the relief sought or involved, if any. See Rule 7.00(b) of the DEM's *Administrative Rules of Practice and Procedure for the Administrative Adjudication Division for Environmental Matters*.
- (2) A copy of each request for hearing must also be forwarded to:

Christina Hoefsmit, Esquire
DEM - Office of Legal Services
235 Promenade Street, 4TH Floor
Providence, RI 02908-5767

- (3) Each named respondent has the right to be represented by legal counsel at all administrative proceedings relating to this matter.

- (4) Each respondent must file a separate and timely request for an administrative hearing before the DEM's Administrative Adjudication Division as to each violation alleged in the written NOV. If any respondent fails to request a hearing in the above-described time or manner with regard to any violation set forth herein, then the NOV shall automatically become a Final Compliance Order enforceable in Superior Court as to that respondent and/or violation and any associated administrative penalty proposed in the NOV shall be final as to that respondent. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and (vi) and 42-17.6-4(b) and (c).
- (5) Failure to comply with the NOV may subject each respondent to additional civil and/or criminal penalties.
- (6) The NOV does not preclude the Director from taking any additional enforcement action nor does it preclude any other local, state, or federal governmental entities from initiating enforcement actions based on the acts or omissions described herein.

If you have any legal questions, you may contact (or if you are represented by an attorney, please have your attorney contact) Christina Hoefsmit at the DEM's Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Tracey Tyrrell of the DEM's Office of Compliance and Inspection at (401) 222-1360 ext. 7407.

Please be advised that any such inquiries do not postpone, eliminate, or otherwise extend the need for a timely submittal of a written request for a hearing, as described in Section F above.

FOR THE DIRECTOR

By: _____
David E. Chopy, Chief
DEM Office of Compliance and Inspection

Dated: _____

CERTIFICATION

I hereby certify that on the _____ day of _____
the within Notice of Violation was forwarded to:

ELECTROLIZING, INC.
c/o Prentice-Hall Corp System, Registered Agent
222 Jefferson Boulevard, Suite 200
Warwick, RI 02888

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, HAZARDOUS WASTE
File No.: OCI-HW-16-2
Respondent: ELECTROLIZING, INC.

GRAVITY OF VIOLATION					
SEE ATTACHED "PENALTY MATRIX WORKSHEETS."					
VIOLATION No. & CITATION	APPLICATION OF MATRIX		PENALTY CALCULATION		AMOUNT
	Type	Deviation	Penalty from Matrix	Number or Duration of Violations	
C (1)- Storage Greater than 90 Days	Type I (\$25,000 Max. Penalty)*	Moderate	\$6,250	1 violation	\$6,250
C (2) – Accumulation Container Labeling	Type I (\$25,000 Max. Penalty)*	Moderate	\$6,250	1 violation	\$6,250
C (3) – Incompatible Waste Storage	Type I (\$25,000 Max. Penalty)*	Minor	\$2,500	1 violation	\$2,500
SUB-TOTAL					\$15,000

*Maximum Penalties represent the maximum penalty amounts per day, per violation.

ECONOMIC BENEFIT FROM NONCOMPLIANCE

COSTS OF COMPLIANCE, EQUIPMENT, O&M, STUDIES OR OTHER DELAYED OR AVOIDED COSTS, INCLUDING INTEREST AND/OR ANY COMPETITIVE ADVANTAGE DERIVED OVER ENTITIES THAT ARE IN COMPLIANCE. NOTE: ECONOMIC BENEFIT MUST BE INCLUDED IN THE PENALTY UNLESS:

- THERE IS NO IDENTIFIABLE BENEFIT FROM NONCOMPLIANCE; OR
- THE AMOUNT OF ECONOMIC BENEFIT CAN NOT BE QUANTIFIED.

A review of the record in this matter has revealed that Respondent has either enjoyed no identifiable benefit from the noncompliance alleged in this enforcement action or that the amount of economic benefit that may have resulted can not be quantified.

COST RECOVERY

ADDITIONAL OR EXTRAORDINARY COSTS INCURRED BY THE DIRECTOR DURING THE INVESTIGATION, ENFORCEMENT AND RESOLUTION OF AN ENFORCEMENT ACTION (EXCLUDING NON-OVERTIME PERSONNEL COSTS), FOR WHICH THE STATE IS NOT OTHERWISE REIMBURSED.

A review of the record in this matter has revealed that the DEM has not incurred any additional or extraordinary costs during the investigation, enforcement and resolution of this enforcement action (excluding non-overtime personnel costs), for which the State is not otherwise reimbursed.

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$15,000

PENALTY MATRIX WORKSHEET

CITATION: Storage Greater than 90 Days

VIOLATION NO.: C (1)

TYPE		
<u>X</u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> </u> TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
FACTORS CONSIDERED: Taken from Section 10 (a) (2) of the DEM's <i>Rules and Regulations for Assessment of Administrative Penalties</i>		
(A) The extent to which the act or failure to act was out of compliance: Respondent stored hazardous waste onsite for greater than 90 days without first obtaining a permit from the DEM. The DEM's regulations authorize large quantity generators to store hazardous onsite for less than 90 days without obtaining a permit. The requirement to obtain a permit is a core element of the regulatory program because a licensed facility has protocols and specialized equipment for the safe long term storage, treatment and disposal of hazardous waste.		
(B) Environmental conditions: Considered, but not utilized for this calculation.		
(C) Amount of the pollutant: 6 containers holding a total of approximately 250 gallons of hazardous waste.		
(D) Toxicity or nature of the pollutant: The waste contained corrosives, including nitric acid, which are toxic and harmful to humans if inhaled or contacts skin directly. Methyl ethyl ketone is an eye, nose and throat irritant and with prolonged exposure may cause pulmonary edema, blurred vision and related symptoms.		
(E) Duration of the violation: 103 days to 336 days, as of the date of the inspection.		
(F) Areal extent of the violation: Considered, but not utilized for this calculation.		
(continued)		

(continued from the previous page)

- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to take reasonable and appropriate steps to prevent the noncompliance by shipping the waste to a licensed facility within 90 days. The DEM has no knowledge of what steps, if any, were taken to mitigate the noncompliance.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Respondent previously failed to comply with the DEM's Hazardous Waste Regulations for this same violation as documented in a Letter of Non-Compliance dated 13 December 2012.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Respondent had complete control over the occurrence of the violation and failed to take steps to prevent the occurrence.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

MAJOR	<u> X </u> MODERATE	MINOR
-------	-----------------------	-------

Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500 \$6,250	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250	\$1,250 to \$2,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Accumulation Container Labeling

VIOLATION NO.: C (2)

TYPE		
<u>X</u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> </u> TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
FACTORS CONSIDERED: Taken from Section 10 (a) (2) of the DEM's <i>Rules and Regulations for Assessment of Administrative Penalties</i>		
(A) The extent to which the act or failure to act was out of compliance: Respondent failed to label 90 day containers holding hazardous waste. The DEM's regulations require generators to label containers holding hazardous waste. The requirement to label containers is an integral part of the regulatory program because it reduces the potential for mismanagement of hazardous waste. Proper labeling provides important information regarding the chemical properties of the waste for emergency responders who may be called to a facility during a fire, spill or release.		
(B) Environmental conditions: Considered, but not utilized for this calculation.		
(C) Amount of the pollutant: 8 containers holding a total of approximately 340 gallons of hazardous waste.		
(D) Toxicity or nature of the pollutant: The waste contained corrosives, including nitric acid, which are toxic and harmful to humans if inhaled or contacts skin directly. Methyl ethyl ketone is an eye, nose and throat irritant and with prolonged exposure may cause pulmonary edema, blurred vision and related symptoms.		
(E) Duration of the violation: 103 days to 308 days, as of the date of the inspection.		
(F) Areal extent of the violation: Considered, but not utilized for this calculation.		
(continued)		

(continued from the previous page)

- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to take reasonable and appropriate steps to prevent the noncompliance by properly labeling the containers while in storage. The DEM has no knowledge of what steps, if any, were taken to mitigate the noncompliance.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Respondent previously failed to comply with the DEM's Hazardous Waste Regulations for this same violation as documented in a Letter of Non-Compliance dated 13 December 2012.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Respondent had complete control over the occurrence of the violation and failed to take steps to prevent the occurrence.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

MAJOR	<u> X </u> MODERATE	MINOR
--------------	------------------------------	--------------

Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500 \$6,250	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250	\$1,250 to \$2,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Incompatible Waste Storage

VIOLATION NO.: C (3)

TYPE		
<p><u>X</u> TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u>TYPE II</u></p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u>TYPE III</u></p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p>FACTORS CONSIDERED:</p> <p>Taken from Section 10 (a) (2) of the DEM's <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: Respondent stored containers holding hazardous waste in close proximity to containers holding incompatible wastes without a physical barrier to prevent mixing of the wastes. The DEM's regulations require generators to store containers holding incompatible hazardous waste in separate areas to prevent unplanned chemical reactions that may result in fires, explosions or the release of toxic gases.</p> <p>(B) Environmental conditions: The containers of incompatible wastes were stored in the Facility's Plating Room where at least 12 employees work on a daily basis.</p> <p>(C) Amount of the pollutant: One 50-gallon container and 3 totes holding a total of approximately 800 gallons of incompatible hazardous waste.</p> <p>(D) Toxicity or nature of the pollutant: The waste included a basic sodium hydroxide solution and lead tape with chromic acid which when mixed are likely to react and produce toxic fumes.</p> <p>(E) Duration of the violation: Full duration unknown – at least 25 days. The containers holding waste sodium hydroxide solution were dated 12/15/15.</p> <p>(F) Areal extent of the violation: Considered, but not utilized for this calculation.</p>		

(continued)

(continued from the previous page)

- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to take reasonable and appropriate steps to prevent the noncompliance by storing incompatible hazardous wastes in separate areas and by failing to use a physical barrier to separate the wastes. The DEM has no knowledge of what steps, if any, were taken to mitigate the noncompliance.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Respondent had complete control over the occurrence of the violation and failed to take steps to prevent the occurrence.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

MAJOR	MODERATE	<u> X </u> MINOR
--------------	-----------------	---------------------------

Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250 \$2,500	\$1,250 to \$2,500	\$250 to \$1,250